

**MINUTES OF THE
PUBLIC RECORDS COMMISSION MEETING
Wednesday, June 16, 2010
11:00 A.M.**

Commission Members Present:

Tre Hargett, Secretary of State

Eddie Weeks, sitting in for Joseph Barnes, Director, Office of Legal Services

Rick DuBray, sitting in for David Lillard, State Treasurer

Gwendolyn Sims Davis, Commissioner, Department of General Services

Ann Toplovich, Tennessee Historical Society

In Attendance:

Karla Nicodemus, Department of General Services

Teresa Rudolph, Department of Health

Jami Awalt, Tennessee State Library and Archives

Cathi Carmack, Tennessee State Library and Archives

Wayne Moore, Tennessee State Library and Archives

Chuck Sherrill, Tennessee State Library and Archives

Richard Arnold, Secretary of State

Cody York, Secretary of State

Mona Hart, Secretary of State

Tommy Chester, Deputy Commissioner, Department of General Services

William Rusie, Assistant Commissioner, Department of General Services

Donna K. Bridges, Department of General Services

Thomas Oduor, Department of General Services

Linda Little, Bureau of TennCare

Sherry Sharp, Bureau of TennCare

Michael Catalano, Supreme Court

Elizabeth Crawford, Department of General Services

Jamie Fohl, Department of Treasury

Agenda Item I: Welcome

Mr. Hargett, Chairman of the Public Records Commission called the meeting to order at approximately 11 a.m.

Agenda Item II: Approval of May 28, 2010 PRC Meeting Minutes

Mr. Hargett moved for approval of May 28, 2010 PRC meeting minutes. It was seconded and had no objections. It was so ordered.

Agenda Item III: Review and Potential Disposal of Flood Damaged Records

Mr. Hargett felt that agencies did not take all criteria to heart when determining records to be disposed of. Some agencies did not look at the June 30, 2011 threshold carefully. They did not acknowledge the time threshold. The agencies need to make sure that they understand the time threshold that was set. Mr. Hargett would not entertain a motion to destroy these records because of our uncertainty

about the agencies' adhering to the threshold set. Ms. Bridges can tell us where we are and Mr. Fohl from Risk Management can share his thoughts and give us an update on our work with Belfor and how that is progressing. Mr. Hargett stated that he would like this to be informal so that people can address their questions to the staff.

Ms. Bridges – Are you more concerned with the records restoration process or destruction or the records center or both?

Mr. Hargett – Yes.

Ms. Bridges – All of the office area and the wet records at the records center has been cleaned out. What is left are the dry records. What concerns us are the roughly 72,000 records that remain. They are being exposed to humidity which creates mold. Because the sheetrock and other areas in the office area have not been removed, it is still a wet environment according to Belfor. Our former micrographics room is rapidly turning moldy. We have shut the door so that we would not be exposed to it. The landlord is ready to start demolition but there is a concern because they tested the linoleum which has asbestos in the glue. The State is concerned about particles landing on the dry records in the warehouse. That is how the record center stands on Cowan St.

Mr. Hargett – An email was received from Dottie Haygood in Finance and Administration stating they had planned to move the records center to PNG (Piedmont Natural Gas). After discussing it with Commissioner Davis, neither approved of moving from one flood prone building to another one. Commissioner Davis explained this to Finance and Administration and the State Building Commission has given permission to start looking for space without going through the advertising process. Due to the dire situation, it requires urgent attention.

Ms. Bridges – Due to the mold situation and mold spores existing on the dry boxes, TRICOR storage could not be used due to their unconditioned building. Records remain in the Cowan St location because Belfor has provided a de-humidifier, chiller and generator which is keeping it cooler and at a better humidity rate which is helping mitigate the mold growth.

Mr. DuBray – Treasurer Lillard has also requested that we work with Jamie Fohl and others in the Risk Management office to come up with a good location that will result in our records being insurable.

Mr. Hargett – It is going to require a shift in thinking as well. I don't think we are going to be in the downtown area anymore. We need to move to an area that we might get a better space but it won't be downtown where the square footage is at a premium.

Commissioner Davis – In our conversations we have looked at areas and have decided a new location will be outside of downtown. Plus the lease space cost is a lot less. This new facility will be out of the flood plain. These are all things that we are highly taking into consideration.

Ms. Bridges – Restoration and destruction of records. Belfor has all of the wet records both those identified and those in the aisles. Some of the boxes were disintegrating. Some of the labels came off of the boxes. Those type of boxes were repackaged. Other boxes were taken and put into new boxes and labeled with a consecutive number if labels were not found.. At the same time, they were numbering the other boxes as well to keep a running count of what was being stored in refrigerated trucks. 28 loads were delivered to Ft. Worth.

Mr. Hargett – 28 truck loads?

Ms. Bridges – Yes, trailer loads of records. Refrigerated. 7 trailers are non-refrigerated and are sitting at Cowan St waiting to be destroyed. They have been sitting there for 5 or 6 weeks. They are sealed and padlocked. We can imagine what those records probably look like.

Mr. Hargett – Are those truck loads already authorized to be destroyed? They would not fall in the criteria we talked about last week?

Ms. Bridges – They were ready to be destroyed as of April 30th. There are some that are on the inventory list as unmarked. I woke up at 3:00 this morning and thought of office records that we did not inventory and microfilm...some pallets of records that were scanned and microfilmed that were not in our system. This was from an old project that we had done several years ago. I don't have figures but my memory is remembering what could possibly make up those unmarked destruction items.

Mr. Hargett – How high is your confidence level that those 7 truckload on Cowan St are eligible to be destroyed?

Ms. Bridges – 99.9%. I am very confident.

Mr. Hargett – I would raise the question of when they became eligible to be destroyed.

Ms. Bridges – Thomas, you will have to answer that.

Mr. Oduor – Yes, they are eligible.

Mr. Hargett - When did they cross the threshold from not being eligible to being eligible to be destroyed?

Mr. Oduor – When we run the disposal report in the Foremost system, it flags boxes as being qualified. New boxes would be unqualified. In the absence of any other information when we look at the report and it says qualified, it has already reached that threshold.

Ms. Bridges - It reads the through date; the RDA is taken into account. The information that the customer enters in for that box has a beginning and through date. It should calculate and match it to the RDA. So if it says 3 years from 2000, it should be 2003 when it should be disposed.

Mr. Hargett – Anything eligible to be destroyed prior to April 30, 2010, had it been destroyed?

Ms. Bridges – No, let me qualify that. We run a yearly report and we run by allotment code. The agencies review the report and have to sign off that the record can be destroyed or they need to be held for whatever reason. When those are returned to us, we review what is written according to the disposal report.

Mr. Hargett – Am I misinterpreting or is there a potential that someone sent us records in January of a year, if we only run a report in December we could be storing something an extra eleven months that we did not need to store it?

Ms. Bridges – If it is to be destroyed within that year we don't accept it. It has to have at least a year retention.

Mr. Hargett – Let's say its 3 years. I give you something in January of 2006. You run your reports in December. In my mind it should be ready to be destroyed January of 2009. If you don't run the report until December, those boxes are...

Ms. Bridges - There could be a few months.

Mr. Hargett - There could be eleven. Have we ever considered running the reports more frequently?

Ms. Bridges – We used to. When we had more staff and our previous system 7 or 8 years ago. It would let us run more than once a year. Our current system has some flaws in it.

Commissioner Davis – When did you go to once a year?

Mr. Oduor – It was back in 2005.

Mr. Hargett – How much is staffing down since 2005?

Ms, Bridges – We were at 20 staff, 3 moved to Printing January 1st. Now we are down to 12.

Mr. Hargett – OK. So an agency isn't notified that their records are scheduled to be destroyed until after their records were scheduled to be destroyed?

Ms. Bridges – No. The disposal report is sent to the agency first. They sign off on whether there is a hold or authorize to destroy then we destroy. It has to be in writing.

Mr. Hargett – They are only past their destruction date if they have placed a hold on them?

Ms. Bridges – They could be a few months past their destruction date by the time we get the disposal back.

Mr. Hargett – The disposal authorization by the agency. Can you tell me are you getting from Records Management to fulfill what you need from the TSLA perspective?

Dr. Moore – Yes, sir. We were lacking some date ranges for some specific boxes, but Donna sent us that information.

Mr. Hargett – Does anyone else have any questions? Several of you pointed out at the last meeting the historical nature of these documents and that we handle with care. We need to be cautious and dispose of things that don't need to be disposed of. We are not offering anymore records to be approved. I hope you believe that is a prudent way to proceed.

Ms. Toplovich – Of the records that have been damaged, are any of those court records?

Mr. Hargett – Yes.

Mr DuBray – What kind of time are we looking at in terms of going back to the agencies and having them reanalyze due to the growing costs.

Commissioner Davis – I suggested based upon information that we have right now because it is limited, there is not a high confidence level in what we have, that we go back and take an additional look at records labeled to be destroyed. I feel it is worth waiting and backing up to get a better picture of what we have.

Mr. Hargett – Commissioner, I agree. I am sending Cody York to you to work under your direction so that we can do whatever we need to in order to rebuild, recalibrate, whatever we need to do to ascertain that we have what we think we have, getting rid of what we think we can get rid of, so that we can have a high level of confidence.

Mr. Hargett – I am going to ask if both Cody and Liz send you and I an email in the next week or so that we can distribute to the other committee members so that we can update where we stand.

Ms. Toplovich - ...what should the expectations would be.

Mr. Hargett – I don't want to over simplify it, but it seems to me... we store what we want to store and we don't store what we don't have to store. I think if we adhere to that, we will have accomplished a lot. So any further business, any questions, discussions...

Commissioner Davis – Mr. Chairman, I would like for Jamie Fohl of Risk Management to talk about cost there will be a time as Jamie explains when that cost ends.

Mr. Hargett – Jamie if you would introduce yourself.

Mr. Fohl – I am Jamie Fohl with the Treasury Department, Division of Risk Management. I am responsible for procuring, among other things, all of the insurance policies the State has. With this one loss at the records center, the states emergency services contractor has gone out to bid with General Services ...they have worked closely with Donna and the General Services folks at the records center to identify all of the damaged boxes. There has been two counts. One count was by Belfor and before a box went into a refrigerated trailer, that box was also counted in the pallet by (unintelligible).... So we have a good number of our boxes that are in Ft Worth, TX which is the site where the restoration will take place. This is a very expensive process. We don't have all of the costs yet because it depends on how much cleaning the end product is going to take. The insurance adjustors are reserving between three and six million dollars depending on how many boxes are having to be restored. Plus we have the other media that has to be restored. Right now there are approximately 21,000 boxes of documents that are in Ft Worth. They are in warehouse cold storage to stabilize those documents. They were transported in 18-wheeler refrigerated trucks and are in cold storage. We are waiting for the next step which is a freeze drying chamber which Ft Worth has one of the biggest freeze drying chambers in the country. They have three chambers that have about 1500 boxes capability. Of course they do have other clients so right now the only boxes that have been authorized for the second step which is the freeze drying chambers which takes between one and three weeks depending on the saturation of documents is approximately 230 boxes. Right now the insurance company was very concerned about the location and the cost. Right now the insurance company and risk management because we have a deductible of five million dollars, we are paying for the warehousing of the documents until we can determine by General Services or this Commission what documents need to be destroyed, what documents need to be restored in Ft Worth and what documents need to be destroyed. Those that need to be destroyed because they can't be shredded because they are wet will go to a facility in Panama City Beach which is a DEA facility that has been approved by General Services. We already have one load of Commerce and Insurance documents that went down to Panama City from the Andrew Johnson building because of the sensitive nature so they are familiar with federal records that are very sensitive. So the issue for the insurance carrier now is the identification of what needs to be restored versus what needs to be destroyed. They are being patient. They thought that the list was almost through and that they would get a list by next

week. I need to tell the insurance company what the time frame is for having the list. Ideally what we would like to have is one list because not only is there a storage fee, there is also a movement fee. Every time they touch a pallet there is another fee. Let's say the list from Donna is at the back of the warehouse, they may have to move all of these boxes. From an efficiency standpoint, if we could have one list they may only have to touch these boxes one time. I would graciously ask if the board could give me a time period that we can give to Belfor so they can start the process. Right now only 230 boxes are in the freeze dry chamber. Probably by the first week of July we will have a finished product of different levels of cleaning to be determined. So that every other box can go through the same level of cleaning.

Mr. Hargett – Cody, do you have any thought of what an appropriate time line would be?

Mr. York – I couldn't give a figure. It would be premature. It would be a guess; I apologize.

Mr. Hargett – Do you think it's a month, two months, two weeks? Because they are going to be concerned because of the cost they are bearing with this.

Mr. York – For me personally, I would be disappointed if it was over a month. I think that is too long to ask someone to do what they are doing. I think we have an obligation to the company as well to ensure that we get it done quickly and accurately.

Mr Weeks – How many agencies with affected records have not responded to the request for information?

Mr. Hargett – Mona or Donna, do ya'll know that?

Ms. Hart – I think it's five.

Commissioner Davis – We have had responses, it should be less than five.

Ms. Bridges – Three. Corrections, F & A's Division of Intellectual Disabilities – F & A did respond, Revenue.

Mr. Hargett – Mona, could I ask you to follow up with phone calls within the day to see where we are?

Mr Weeks - Do we know how many boxes those affected agencies have?

Ms. Bridges - According to this, Corrections had 16, F&A Division of Intellectual Disabilities has 13, and Revenue has 3,419.

Mr. Hargett – We'll have to follow up again with every agency. We'll have to get that done again so we get a better list coming out of those agencies. Cody , Liz and Records Management have a huge job ahead of them.

Ms. Toplovich - Do we feel confident that the departments understand the need to act on this swiftly and competently?

Mr. Hargett – I thought we had made that clear. We are going to have to make that clear again. And that is my concern. I think some of them, because we conveyed such a sense of urgency, they just said "ok, take it all" instead of going back and really looking at what could be destroyed. So that may be why a lot of them got back to us so quickly because...

Mr. Fohl – May I ask a couple of questions. One is could Donna send a list of those boxes that we know can be destroyed for Belfor. Those will have to go in the front so we can go ahead on restore. And number two the 7 trailers that are at the site that we know are to be destroyed, can we get Belfor...

Mr. Hargett – You are shaking your head no at me, Cody, can you tell me why?

Mr. York – I don't think that we have a confidence level high enough in all of the different lists to be able to produce that at this point. I think Jamie's point about logistics...it would be best served if we put all of our efforts into getting one clean list in the next 30 days would be better than piece mealing it and risking errors that transfer from lists. If we can get you one clean list in 30 days, does that help you?

Mr. Fohl – That gives me something that I can go back to the insurance carrier and say "they are really trying hard to get one list."

Mr. Hargett – I guess what I am hearing, you said earlier different lists, a concern that I have it has to do what you mentioned about the current system we are working in, it sounds as though you have different lists with different information that have conflicting information. Now we are in crisis mode and are worried that we will destroy something that is on one list but not on the other one. We have a real opportunity to come out of this with a much cleaner system and knowing what we have to do going forward. It is causing discomfort and we are going to have to fix it.

Commissioner Davis – That is what Cody and Liz are working towards. Getting a list we're confident in.

Mr. Hargett – So I am sorry that is not the answer that you want to hear.

Mr. Fohl – I ...insurance company...(unintelligible)

Mr. Hargett – If they would like to speak with me personally or the Commissioner, I am sure either one of us can talk to them. Any further business or discussion we want to take up? Once again I apologize for not taking up any more records today. I think it was a prudent thing to not do.

Agenda Item IV: Adjournment

Mr. Hargett adjourned after motion was seconded and not objected.